



**LAW OFFICE OF GERALD
OGINSKI, LLC**

35 South Drive
Great Neck, NY 11021

T 516-487-8207

Gerry@Oginski-Law.com

“Objection Judge! There’s No Founda- tion”

"Doctor, isn't it true you operated on the wrong side of this patient's brain?"
"Objection!" the defense attorney yells. "There's no foundation." You want to know what the objection means and what the judge is likely to say? Come join me for a moment as I share with you some great information. Hi, I'm Gerry Oginski. I'm a New York medical malpractice and personal injury attorney practicing law in the state of New York.

Let's say this is a medical malpractice case where we are claiming that the doctor operated on the wrong side of the patient's brain. Now the case is at trial and I have an opportunity to question the doctor who you believe violated the basic standards of medical care. This is the surgeon who operated on the wrong side of the brain. I can call this doctor as my very first witness and I can now question him as if he is a hostile witness and I'm now cross-examining him. That means I can use leading questions so I don't have to ask open-ended questions.

Why can't I ask, "Doctor, isn't it true that you operated on the wrong side of this patient's brain?" as one of my very first questions? Can't I ask that question? The answer is yes I can. Now the defense attorney jumps up and he raises an important objection. "Objection, judge. There's no foundation." Now, what does that mean? It means he's arguing to the judge that I haven't asked a series of questions to let the court and the jury know what this issue is. What's the problem here? Did this doctor really operate on my client? Did the doctor go ahead and operate on this particular day? Is this the right doctor? Is this the right procedure?

There are certain foundation questions that many times are asked to go ahead and set the stage for other questions that come after it. Now, what's the judge likely going to say? There are some instances where the judge will say, "Mr. Oginski, objection sustained," which means I can't ask that question. "Go ahead and ask foundation questions first." If the judge says that, I'll say, "Fine, judge. Dr. Jones, isn't it true that on January 1 you operated on my client, your patient?" "Yes, that's true." "Isn't it true that on that day

you were supposed to perform a craniotomy on her brain because she had a mass in her brain? Isn't that true?" "Yes." "And it was your intention to go ahead and operate on the right side of the brain. Isn't that correct?" "Yes." "In fact, the tumor was on the right side, isn't that true?" "Yes." "You told the patient you'd be operating on the right side, isn't that right?" "Yes."

"Doctor, on the day of surgery isn't it true you operated on the left side of her brain?" What did I do? I laid a series of foundational questions to tell the jury and explain to them that this patient was scheduled to have surgery. She was scheduled to have surgery on the right side of her brain, and now the doctor, for whatever reason, operated on the wrong side of the brain. That's what it means by laying a foundation.

Now if the judge disagrees with the defense attorney's objection, I can go ahead and ask that question and the doctor will then have to answer. I can then ask those follow-up questions later on or shortly afterwards. Because I want the jury to understand immediately what the issue is, what's the problem, why are they there. By asking that question immediately the jury gets an immediate understanding after listening to opening arguments about what this case really is all about.

Why do I share this great information with you? I share it with you just to give you an insight and an understanding into what goes on in these medical malpractice cases here in New York. I realize you're watching this video because you likely have questions or concerns about your own particular matter. If your matter did happen here in New York and you're thinking about bringing a lawsuit but you have questions that need to be answered first, what I invite you to do is pick up the phone and call me. I answer questions like yours every single day and I'd love to talk to you. You can reach me at 516-487-8207 or by email at gerry@oginski-law.com. That's it for today's video. I'm Gerry Oginski. Have a great day.